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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PETER ZOMAYA, Plaintiff and Respondent, v. ZOMAYA GROUP, INC. Defendant and Appellant.	G030932 (Super. Ct. No. 01CC00038) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Steven L. Perk, Judge. Affirmed.

Law Office of Michael W. Kinney, Michael W. Kinney; Stephan, Oringher, Richman & Theodora, Michael W. Kinney, Robert M. Dato and Brian P. Barrow for Defendant and Appellant.

Law Offices of Steven L. Stern and Steven L. Stern for Plaintiff and Respondent.

* * *

Defendant Zomaya Group, Inc. appeals from a $150,000 judgment in favor of plaintiff Peter Zomaya for breach of an oral agreement, contending there was no consideration for the contract. We disagree and affirm.

FACTS

Christ Zomaya (Chris) is the sole shareholder (along with his wife) and CEO of defendant. Plaintiff, Chris's brother, began working for defendant in 1989. In May 2000, plaintiff left defendant's employ. The parties disagree over whether he was terminated or left on his own. Chris testified he had becoming increasingly dissatisfied with plaintiff's performance over the past several years and had decided in March or April 2000 to terminate him. Rather than firing him outright, however, on May 9 he met with plaintiff and "plant[ed] seeds" that plaintiff become a consultant for defendant.

Plaintiff told Chris he was not sure about consulting but would consider it; what he wanted, however, was severance pay. Plaintiff testified that although Chris initially balked about severance, he ultimately agreed to pay him $150,000. Plaintiff testified he had to do nothing to receive the severance pay: "I had already done for the severance. I had worked for the company for 11 years." He also said he told Chris "the consultancy was an extra deal. . . . I would be willing to do [consulting] but it would be different from the severance pay."

According to Chris, there were never to be two separate agreements. When plaintiff had requested severance, Chris "told him absolutely not," stating, "I don't believe that anything is due because I paid you more than fairly. . . . [I]f I offer any kind of severance, that would be like me saying I didn't pay you fairly while you were employed with me." Plaintiff wanted $250,000 plus insurance. Chris said that although plaintiff "ke[pt] on talking severance," he was "talking consulting." In response, plaintiff said "something to the effect of I don't want to have to get legal issues involved . . . ."

Chris testified he was concerned plaintiff might hire an attorney and wanted to avoid that and the potential expense. Chris stated he and plaintiff never reached any agreement.

Plaintiff testified he and defendant entered into both the severance agreement and the consulting agreement on May 15; as a result, plaintiff cleaned out his office that evening. Later that night, Chris called plaintiff and asked him to return the next morning "to turn over [his] accounts." Plaintiff asked for "a couple of days to try to clear [his] heed [*sic*]," and Chris "blew up." When plaintiff went to the office the next morning, defendant told him, "the deal is off. . . . I'm not paying you one penny." Chris also said, "You're fired. . . . You can do whatever you want. . . . You can either quit or you're fired. One of the two." Plaintiff denied that prior to that day, Chris told him he was fired or asked him to quit.

Plaintiff filed this action for, among other things, "breach of oral severance agreement" (capitalization and bold omitted) and fraud, seeking damages of $256,000 on the contract claim. He alleged defendant had agreed to pay him $150,000 for severance, $56,000 for one year of consulting, and an additional $50,000 at the end of that year.

After trial and during deliberations, the jury asked in reference to the cause of action for breach of contract, "Is this all or nothing?" The court stated, "The answer is yes." The jury returned a special verdict, awarding plaintiff $150,000 on the breach of contract claim. It specifically found the contract was supported by consideration.

DISCUSSION

Defendant contends the severance agreement is unenforceable for lack of consideration. It maintains plaintiff neither bargained nor agreed to "do anything new for the $150,000." In making this argument it relies on plaintiff's position that there were two separate agreements, one for consulting and one for severance, and plaintiff's insistence he was to do nothing new to receive severance pay. Defendant points to

plaintiff's testimony that he "had already done for the severance. [He] had worked for the company for 11 years."

Defendant makes a separate argument there was no substantial evidence to support the finding of consideration. But this is just the second face of the same coin, and we disagree with both claims.

Our review is limited to a determination of whether there is substantial evidence in the record to support the judgment, which we presume to be correct, and not whether there is evidence to support the opposite result. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) We are required to accept all evidence which supports the successful party, disregard the contrary evidence, and draw all reasonable inferences to uphold the verdict. (*Minelian v. Manzella* (1989) 215 Cal.App.3d 457, 463.) Thus, it is not our role to reweigh the evidence, redetermine the credibility of the witnesses, or resolve conflicts in the testimony, and we will not disturb the judgment if, as here, there is evidence to support it. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 766.)

"[G]ood consideration for a promise" includes "[a]ny benefit conferred, or agreed to be conferred, upon the promisor . . . to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered . . . other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor . . . ." (Civ. Code, § 1605.) The record here reflects good consideration.

The evidence in this case is tinged with no small amount of irony. The parties are relying substantially on each other's evidence, and trying to downplay or ignore their own. Plaintiff testified there were two agreements; defendant focuses on this in support of its claim no consideration supported the alleged severance agreement. Plaintiff, on the other hand, argues there was one agreement consisting of "a set of enforceable promises" (capitalization omitted), including plaintiff's promise to consult and maintain continued customer relationships with defendant, and to leave the company quietly.

Plaintiff had no obligation at the time he left the company to consult or to depart without incident. His promise to do so satisfies the requirement of consideration set out in Civil Code section 1605.

Chris testified he was concerned plaintiff would get a lawyer involved in their dispute; plaintiff denied ever mentioning it. Yet plaintiff now argues it is reasonable to infer defendant agreed to pay plaintiff to avoid litigation and disruption of the company. As plaintiff contends, settlement of a disputed claim, even if the claim in doubtful, suffices as consideration. (1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, § 218, p. 225.)

Defendant's focus on only plaintiff's evidence is myopic. The testimony of a qualified witness will support a judgment even if the testimony is contradicted by other evidence or is inconsistent or false as to other parts of the testimony. (Evid. Code, § 411; *In re Frederick G.* (1979) 96 Cal.App.3d 353, 366.) Any contradictions go to the weight, not the sufficiency, of the evidence. The jury has the right to reject portions of a witness's testimony while believing other parts. (*People v. Maxwell* (1979) 94 Cal.App.3d 562, 576-577; *Lynch v. Lynch* (1913) 22 Cal.App. 653, 660-661.) If the testimony it has accepted is sufficient to support the verdict, we cannot disturb it, despite any inconsistencies. (*Lynch v. Lynch, supra,* 22 Cal.App. at p. 661.)

Here, there was evidence to support the verdict, even if the jury had to piece it together from different parties' witnesses. The source of the evidence is inconsequential.

Finally, we are not persuaded by defendant's related argument that, as a matter of law, plaintiff could not have resigned because he had already been fired. At best, the evidence is conflicting as to whose version of the events actually occurred. The record contains evidence plaintiff resigned, and that is sufficient to defeat defendant's claim.

DISPOSITION

The judgment is affirmed. Respondent is awarded costs on appeal.

RYLAARSDAM, J.

WE CONCUR:

SILLS, P. J.

MOORE, J.